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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 v.

14 LOUIS V. SCHOOLER and FIRST
15 FINANCIAL PLANNING
16 CORPORATION d/b/a WESTERN
17 FINANCIAL PLANNING
18 CORPORATION,

Defendants.

Case No.: 3:12-CV-02164-GPC-JMA

ORDER APPROVING:

**SALE OF WASHOE IV PROPERTY
AND AUTHORITY TO PAY
BROKER'S COMMISSION**

[ECF No. 1634]

19 Before the Court is the Receiver's Motion for Approval of Sale of the Washoe IV
20 Property and Authority to Pay Broker's Commission. ECF No. 1634. No opposition was
21 filed. Based upon a review of the moving papers and the applicable law, the Court
22 **GRANTS** the Receiver's motion.

23 **BACKGROUND**

24 **A. The SEC Enforcement Action**

25 On January 21, 2016, the Court granted the SEC's motion for final judgment
26 against Defendant Louis V. Schooler. ECF No. 1170. The SEC had initiated this civil
27 action against Defendant Schooler and Western Financial Planning Corporation
28 ("Western") four years earlier, on account of their practice of defrauding investors into

1 purchasing unregistered securities. *Id.* (citing Second Summary Judgment Order, ECF
2 No. 1081). To carry out the scheme, Defendant Western bought undeveloped real estate,
3 with cash or through financing, and simultaneously formed one or more General
4 Partnerships (“GPs”) to own the land. First Summary Judgment Order, ECF No. 1074 at
5 10. Western then sold General Partnership units to investors and sold the undeveloped
6 real estate to the General Partnerships. *Id.* at 10. In total, Western raised approximately
7 \$153 million from almost 3,400 investors through implementing this scheme. *Id.*

8 **B. The Decline of the General Partnership Assets**

9 In 2013, the Court-appointed Receiver, Thomas Hebrank, engaged licensed
10 appraisers to value the 23 properties owned by the General Partnerships. ECF No. 203 at
11 2. Those professionals determined that the land was worth \$16,328,000 and that the net
12 appraised value (appraised value less outstanding balances on all mortgages) of the
13 properties was \$12,860,661. *Id.* The net appraised value represented just 8.41% of the
14 total funds that the general partners had invested in the land. *Id.* The Receiver further
15 estimated that, based on the then-current appraised values of the land, the average GP
16 investor would suffer an 88.40% loss if the GP properties were sold in 2013. *Id.*

17 Three years later, soon after final judgment was entered, the Receiver moved for
18 authority to conduct an Orderly Sale of the General Partnership Properties (“Orderly
19 Sale”). Motion for Orderly Sale, ECF No. 1181-1. In the Motion, the Receiver indicated
20 that the aggregate value in the GP accounts had been steadily decreasing while litigation
21 was ongoing. *See id.* In September 2012, the Receivership had assets of \$6.6 million.
22 *Id.* at 1. By the end of 2015, the assets had dropped to \$3.5 million, and the Receiver had
23 reason to believe that the value of the Receivership would continue to drastically
24 decrease through the end of 2016.¹ This decline, he noted, was due to three main factors:

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26
27 ¹ The Receiver provided the Court with projections that the Receivership would further decline to \$1.8
28 million by the end of 2016. Indeed, the Receiver’s projection has since proved to be accurate. The Twentieth
Interim Status Report submitted by the Receiver indicates that the Receivership’s current cash and cash
equivalent balance was \$666,113. ECF No. 1505 at 17.

1 (1) 14 of the 23 properties were not appreciating in value²; (2) the properties were not
2 worth enough to cover the costs of the GPs carrying the properties; and (3) low levels of
3 investor contributions to pay GP administrator fees, tax preparation fees, property taxes,
4 property insurance premiums, and notes owed to Western. *See id.* at 1-2. In other words,
5 the Receiver concluded, because the money being spent to hold the GP properties was
6 disproportionately high in relation to the value of the GP's real estate assets, the
7 Receivership was in a steady decline. *Id.*

8 In order to prevent the value of the Receivership from falling into further decline,
9 the Receiver proposed that the GP properties be sold in accordance with Court-approved
10 orderly sale procedures. *Id.* The Receiver's proposal explained that the best way to
11 maximize the value of all of the GP assets for the benefit of all investors, irrespective of
12 any given investors' direct property interest, was to initiate an orderly sale of the GP
13 properties. *Id.* The Receiver estimated that the Receivership, after conducting sales of
14 the GP properties, Western's properties and asset recovery, would be worth \$21,804,826.
15 *Id.* at 16.

16 **C. The Receiver's Motion for Orderly Sale**

17 On May 20, 2016, the Court held a hearing on the Receiver's Motion for Orderly
18 Sale, at which time the Court heard from the SEC, Defendant, the Receiver, and the
19 investor-intervenors — that is, those investors who were granted permission under Rule
20 23 to intervene to oppose the Receiver's Motion. *See* ECF No. 1298. A short time
21 thereafter, on May 25, 2016, the Court approved, in part, the Receiver's Orderly Sale
22 process.³ ECF No. 1304.

23 In approving the Orderly Sale, the Court addressed and evaluated the concerns
24

25 ² By way of example, the Receiver notes that the value of these 14 properties in 2016, \$3,732,815, was about
26 \$400,000 less than their value in 2013, \$4,137,000. *Id.* at 2.

27 ³ The Court directed the Receiver to file a Modified Orderly Sale Process that incorporated the public sale
28 process consistent with the requirement of 28 U.S.C. § 2001. ECF No. 1304. The Receiver filed a modified
proposal on June 8, 2016 (ECF No. 1309) and the Court approved the modified proposal on August 30, 2016
(ECF No. 1359).

expressed by the Receiver, the SEC, and myriad investors, all of whom held differing positions on whether the Orderly Sale would benefit the Receivership estate. *See generally* ECF Nos. 1181 (Motion for Orderly Sale), 1232 (SEC Response), 1234 (Dillon Investors' Response), 1235 (Graham Investors' Response); *see also, e.g.*, ECF Nos. 1240, 1242, 1244, 1249-1257 (Letters from Investors). The Court also took into consideration the recommendations of the investors' experts, as set forth in the Xpera Report. *See* ECF No. 1304 at 16. The Xpera Report, the Court noted, substantially agreed with the Receiver on how to maximize the value of the Receivership estate and, for the most part, agreed on the appraised value of the various GP properties. *Id.* As such, the Court directed the Receiver, where feasible, to incorporate the recommendations of the Xpera Report into his ultimate Orderly Sale proposal. *Id.* at 19.

On July 22, 2016, the Receiver moved for permission to engage CBRE, a real estate brokerage firm, as a consultant in order to weigh the pros and the cons of the Xpera Report. ECF No. 1341-1. The Court granted the Receiver's motion on August 30, 2016. ECF No. 1359. CBRE presented its findings on the GP properties on October 24, 2016. ECF No. 1419 (filed under seal). On November 22, 2016, the Receiver submitted a report evaluating the Xpera Report recommendations. ECF No. 1405. The Court reviewed the Receiver's report and adopted the recommendations contained therein on December 12, 2016. ECF No. 1423.

D. Washoe IV Property

The Washoe IV Property (the "Property") is approximately 116.43 acres of undeveloped land in Washoe County, Nevada. ECF No. 1634-1 at 2. The Property was held outright by four General Partnerships—Rose Vista, Steamboat, Galena Ranch, and Redfield Heights—but it has since been transferred to the Qualified Settlement Fund Trust. *Id.*

In 2013, the Receiver obtained an appraisal of the Property estimating the value to be \$375,000. *Id.* In 2015, another appraisal of the Property estimated its value to be \$350,000. *Id.* In 2016, Xpera Group valued the Property between \$582,150 and

1 \$640,365, with a recommendation that the property be sold “now, as-is.” *Id.*

2 The Lansing Companies (“Lansing”) contacted the Receiver on several occasions
3 suggesting an interest in the Property. *Id.* In August 2015, Lansing sent the Receiver a
4 letter of intent to purchase the Property. *Id.* Ultimately, however, the Receiver’s offer—
5 which had been voted on by the interested General Partnerships and approved by the
6 Court—was declined. *Id.* at 2–3. In 2016, Lansing contacted the Receiver to propose a
7 joint venture for developing the Property; after consulting with consultant CBRE,
8 however, the Receiver declined the proposal (with approval from the Court). *Id.* at 3. In
9 2017, Lansing again showed an interest in purchasing the Property, this time for
10 \$660,000. *Id.* After completing an inspection of the Property, however, Lansing chose
11 not to proceed. *Id.*

12 On December 11, 2017, the Receiver recommended the Property be listed for sale
13 with CBRE, as broker, for \$400,000. ECF No. 1564. According to the Receiver, CBRE
14 did not believe that the Property would receive further offers in the Xpera Group
15 valuation range. ECF No. 1634-1 at 3. The Court approved the recommendation, ECF
16 No. 1581, and CBRE (“Broker”) listed and advertised the Property. *Id.* Ladera
17 Properties, LLC (“Buyer”) made a credible offer for the Property for \$325,000, to which
18 the Receiver countered for \$360,000. *Id.* The Buyer countered again at \$345,000, and
19 the Receiver re-countered at \$350,000; the Buyer then accepted. *Id.*

20 In accordance with the Court-approved modified Orderly Sale procedures, *see*
21 *generally* ECF No. 1309, 1359, the Receiver indicated that it would send notice of the
22 offer to investors. ECF No. 1634-1 at 3. On August 22, 2018, the Receiver notified the
23 Court that no qualified overbids had been received for the Property. ECF No. 1646.

24 **E. Conclusion**

25 The Court finds that the purchase price of \$350,000 is reasonable in light of the
26 fact that this was the exact amount of the 2015 valuation of the Property. In addition,
27 while it is below the Xpera Group’s valuation range, CBRE reached the conclusion, after
28 analyzing the Property, that the Receiver would not receive offers if the Property was

1 listed in that range. ECF No. 1651. The Court is also satisfied that the Receiver has
2 complied with the modified Orderly Sale procedures. The Receiver's notice of the sale
3 adhered to the modified Orderly Sale procedures—which require that notice of the sale
4 be published “in the county, state, or judicial district of the United States *wherein the*
5 *realty is situated*,” 28 U.S.C. § 2002 (emphasis added)—by publishing notice in the Reno
6 Journal-Gazette and by providing notice to the investors. Accordingly, and given that no
7 opposition to the present Motion has been filed or raised, and no qualified overbid was
8 received, the Court **GRANTS** Receiver's motion for approval of sale.

9 **ORDER**

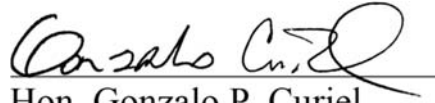
10 The Motion for Approval of Sale of the Washoe IV Property and Authority to Pay
11 Broker's Commission filed by Thomas C. Hebrank—the Court-appointed receiver for
12 First Financial Planning Corporation d/b/a Western Financial Planning Corporation
13 ("Western"), its subsidiaries, and the General Partnerships listed in Schedule 1 to the
14 Preliminary Injunction Order entered on March 13, 2013—having been reviewed and
15 considered by this Court, the Receiver having notified the Court that no qualified overbid
16 has been received, and for good cause appearing therefore, the Court finds as follows:

- 17 1. The Motion is granted;
- 18 2. The sale of the Property known as the Washoe IV Property, as described on
19 Exhibit A to the Declaration of Thomas C. Hebrank in support of the Motion, by
20 Thomas C. Hebrank to Ladera Properties, LLC, is confirmed and approved;
- 21 3. The purchase price of \$350,000 for the Washoe IV Property is confirmed
22 and approved;
- 23 4. The Receiver is immediately authorized to complete the sale transaction,
24 including executing any and all documents as may be necessary and appropriate to do so;
25 and
- 26 5. Pursuant to the listing agreement with the broker, a commission in the
27 amount of 6% of the gross sales price is approved.

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IT IS SO ORDERED.

Dated: August 28, 2018


Hon. Gonzalo P. Curiel
United States District Judge